BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Verizon Telephone Companies	)	
	)	WC Docket No. 02-237
Section 63.71 Application to Discontinue	)	
Expanded Interconnection Service	)	
Through Physical Collocation	)	

INITIAL COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES, THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION, AND BROADVIEW NETWORKS, INC.

Jonathan Canis
Ross A. Buntrock
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
202-955-9600
rbuntrock@kelleydrye.com

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TABLE OF CONTENTS

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	)	
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I. INTRODUCTION AND SUMMARY

The Association for Local Telecommunications Services ("ALTS"), the Competitive Telecommunications Association ("CompTel"), and Broadview Networks, Inc. ("Broadview") (collectively, the "Joint Commentors"), by their attorneys, hereby submit their initial comments in the above-captioned proceeding.

CompTel represents competitive telecommunications providers of all types, their partner suppliers, and their service partners, and the fundamental mission of CompTel is to protect and advance the interests of its member companies so as to ensure the survival and prosperity of the competitive telecommunications industry in the United States and overseas. ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs"). Broadview Networks is a facilities-based, electronically-integrated communications provider (e-ICP) serving small and medium-sized businesses and residential customers in the northeastern and mid-Atlantic United States. Broadview offers local, longdistance and international voice services; data services; and dial-up and high-speed Internet services.

On August 16, 2002, the Verizon Telephone Companies ("Verizon") filed an application ("Application") with the Federal Communications Commission ("Commission"), requesting authority under Section 214 of the Communications Act of 1934, as amended (the "Act"),[1] to discontinue the provision of federally-tariffed physical collocation services in the former Bell Atlantic region.[2] Verizon indicates in its Application that it seeks authority to discontinue providing federal expanded interconnection services through federally-tariffed physical collocation in order to address "inconsistencies" in rate levels and rate structures between its state and federal tariffs that have "been difficult for Verizon to reconcile" and that allegedly have led to carriers "seeking the lowest rates rather than submitting applications based on how the arrangements will be used."[3] Verizon posits that "most former BOCs do not offer physical collocation in their federal tariffs." In fact, SBC provides for federal physical collocation in a large portion of its service area.[4]

Further, in support of its Application, Verizon states that expanded interconnection through virtual collocation will continue to be available through its interstate tariffs, and that physical collocation will continue to be available through Verizon's state tariffs and interconnection agreements.[5] Further, Verizon states that it will allow customers the option

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1 47 U.S.C. § 214(a); *see also* 47 C.F.R. § 63.71.

2 *See Comments Invited on Verizon's Application to Discontinue Federally-Tariffed Physical Collocation Service* (WC Docket No. 02-237), Public Notice, DA 02-2038 (Aug. 19, 2002).

3 *See* Application at 3.

4 *See* Nevada Bell Telephone Company, Tariff No. 1 FCC, Access Service at § 18.2; Pacific Bell Telephone Company, Tariff No. 1 FCC, Access Service at § 16.4; Southern New England Telephone Company, Tariff No. 39 FCC, Access Service at § 18

5 *See* Application at 4-5.

of retaining *existing* physical collocation arrangements under the interstate tariffs or of converting those arrangements to the rates, terms and conditions in Verizon's state tariffs or interconnection agreements. However, Verizon proposes that supporting physical collocation services for "grandfathered" arrangements, including DC power and new cross-connects, will no longer be available through its federal interstate tariff, but instead must be purchased through state tariffs and interconnection agreements.

In these comments, the Joint Commentors demonstrate that the Commission has no choice but to reject Verizon's Application, which on its face, fails to satisfy Section 214. The only real argument that Verizon makes in support of this Application is that it wishes to charge carriers more for physical collocation service. Clearly, this "justification" does not satisfy the test of Section 214, which requires Verizon to demonstrate that grant of the Application will not adversely affect the present or future public convenience and necessity.

Furthermore, the Joint Commentors submit herein that if the Commission were to grant this Application, it would, in effect, overturn longstanding Commission collocation orders and collocation policy, not to mention judicial decisions interpreting the Commission's orders, an action which is wrong-headed both procedurally and as a matter of law. Accordingly, the Commission should reject Verizon's Application and require Verizon to continue to provide its federally-tariffed physical collocation service.

II. ON ITS FACE, VERIZON'S APPLICATION FAILS TO SATISFY THE BASIC REQUIREMENTS OF SECTION 214 AND ACCORDINGLY, SHOULD BE REJECTED BY THE COMMISSION

Section 214(a) of the Act provides that "no carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."[6] Accordingly, despite its assertion that the Section 214 inquiry focuses only on "whether customers would be able to receive service or a reasonable substitute after the discontinuance,"[7] Verizon actually has the burden to demonstrate that grant of its Application will not adversely affect the present or future interests of the community to which such service currently is offered, including competitors.[8]

Section 214 requires the Commission, in evaluating Verizon's Application, to balance the legitimate interests of both Verizon and the user community to which Verizon's federal physical collocation service is offered. Specifically, Section 214 has been interpreted to require the Commission, in evaluating Verizon's instant Application, to consider the following factors: (1) the financial impact upon Verizon of being required to continue to provide federally-tariffed physical collocation service; (2) the public need for physical collocation service in general; (3) the public need for the particular physical collocation facilities at issue; (4) the existence, availability and adequacy of alternative collocation service; and (5) the increased cost of alternative collocation service that would be incurred by the public if the Application were granted.[9]

As set forth below, Verizon's Application fails to meet any of these five factors, and so must be rejected. In particular, the Joint Commenters demonstrate that the public will be damaged as a result of the increased costs that carriers will incur as a result of the withdrawal of

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6 47 U.S.C. § 214(a).

7 Application at 4. Verizon incorrectly cites to 47 C.F.R. § 63.71(a)(i) for this proposition. In fact, the rule cited by Verizon actually requires Verizon to notify customers affected by the proposed discontinuance and sets forth the required content of such a notice.

8 *See Southwestern Bell Telephone Company; US West Communication; Bell Atlantic Telephone Companies; BellSouth Telephone Companies; Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service,* Memorandum Opinion and Order, 8 FCC Rcd 2589, 2600, ¶ 52 (rel. Mar. 29, 1993)("*Dark Fiber Order*").

9 *Id.* at 2600, ¶ 54.

Verizon's federal physical collocation tariff, both as a result of increased direct costs, and increased transaction costs associated with obtaining alternative collocation. Furthermore, the Joint Commentors show that no suitable alternatives to federal physical collocation are available for most telecommunications carriers, and no alternatives are available for non-certificated carriers, such as ISPs, that currently purchase Verizon's federally-tariffed physical collocation. Finally, despite its bare and unsupported assertions regarding carriers engaging in arbitrage and "tariff shopping," [10] Verizon does not even attempt to demonstrate that it has suffered, or will suffer, any financial or economic hardship if it is required to continue to provide physical collocation service pursuant to the terms and conditions of its federal tariffs. Accordingly, the Commission must conclude that Verizon's Application to discontinue federally-tariffed physical collocation service fails to satisfy the requirements of Section 214.

A. Forcing Carriers To Obtain Physical Collocation Service Pursuant Only To Interconnection Agreements And State Tariffs Unnecessarily And Artificially Inflates The Transaction Costs Incurred By Purchasers Of Verizon's Collocation Services

In evaluating Verizon's Application, the Commission must make inquiry into whether grant of the Application will increase the cost of obtaining alternative collocation services if the Application is granted. In its Application Verizon proposes that it be allowed to provide physical collocation pursuant *only* to interconnection agreements and state tariffs, and sets forth an illustrative tariff which proposes that carriers obtain physical collocation through one of the following methods: "(1) establish an arrangement under Telephone Company Network Interconnection/Miscellaneous network Services State tariffs; (2) establish an Interconnection Arrangement pursuant to Section 251(c) of the Communications Act; or (3)

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10 Application at 3.

negotiate an interconnection Agreement pursuant to Section 252 of the Communications Act."[11] Verizon's above proposed alternatives to federally-tariffed physical collocation are wholly inadequate, and will impose upon carriers significant direct and indirect costs, as compared to the existing federal tariff.

First and foremost, discontinuing the federal tariffing of physical collocation will significantly, and unnecessarily, increase the transaction costs incurred by carriers seeking to provide telecommunications service on a national or region-wide basis by forcing carriers to engage in what are often protracted and costly interconnection negotiations in order to obtain what is now available from a single, nationally (or at least regionally) available tariff.[12] Verizon attempts to justify its Application solely on the basis of its own administrative convenience, but Verizon ignores the fact that such a regime is in direct conflict with previous Commission collocation orders, wherein, the Commission has expressed a strong preference for nationally applicable collocation rules and standards.

Indeed, the Commission has held that nationally applicable collocation rules are preferable, and rejected an approach which would require collocating carriers to submit to the piecemeal negotiation process as a means of obtaining collocation. In fact, in the *First Advanced Services Order*[13] the Commission specifically rejected the approach that Verizon proposes here, of requiring carriers to submit to the lengthy and contentious process of negotiating Section 251

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11 Application at 5.

12 Verizon's Application applies to expanded interconnection services in the former Bell Atlantic region, now known as "Verizon East." *See* Application at 1.

13 *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket 98-147), First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, 14 FCC Rcd 4761 (rel. Mar. 31, 1999) ("*First Advanced Services Order*").

interconnection agreements before being able to obtain physical collocation. The Commission, in adopting new nationally applicable physical collocation rules, stated:

> In adopting new [collocation] rules, we reject the arguments of incumbent LEC commenters that additional national collocation rules are not necessary. For example, BellSouth argues that, rather than adopt additional rules, the Commission should 'allow the parties to discuss and resolve any issues they may have on a case-by-case basis,' and Ameritech argues that 'collocation rates, terms and conditions have been resolved as important contractual obligations.' The record is replete, however, with evidence documenting the expense and provisioning delays inherent in the caged collocation process. National rules governing specific collocation arrangements will help solve those problems.[14]

The same rationale applies to the instant Application. If this Application were granted, carriers "negotiating" interconnection agreements with Verizon would, no doubt, be forced to accept the state rates for physical collocation, and engage in those negotiations in each and every state in Verizon's service area where the carrier wishes to provide service. Indeed, in recent interconnection negotiations with one carrier, Verizon demanded that the collocation section of the agreement make reference to Verizon's effective tariffs. Accordingly, granting Verizon's Application, and allowing carriers to "establish an Interconnection Arrangement pursuant to 251(c) of the Communications Act"[15] is tantamount to requiring that collocation terms and conditions be governed by Verizon's state tariffs. Allowing Verizon to discontinue its federal physical collocation offering will introduce a new layer of uncertainty and unpredictability into a competitive entry process that is already fraught with pitfalls, and will in fact, frustrate existing and future competitors.

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14 *First Advanced Services Order* at 4783-84, ¶ 40 (footnotes excluded).

15 Application at 5.

Discontinuing the availability of Verizon's federally-tariffed physical collocation service will also increase transaction costs by subjecting carriers to disparate pricing regimes that vary significantly from state to state, and will eliminate the possibility of carriers obtaining national, or even regional, collocation solutions through a single, consistent national tariff at a single rate. Despite Verizon's attempt to justify its Application as a way to eliminate "arbitrage" and "tariff shopping" by competitive carriers, Verizon's Application ignores the fact that state tariffed collocation services (provided pursuant to Section 251) and federally-tariffed collocation service (provided pursuant to Section 201) are obviously legitimately subject to differing pricing standards. Nonetheless, Verizon (unconvincingly, and without any further explanation) blames the alleged differential between state and federal rate structures and rate levels on "differences in regulatory activity."

As Verizon well knows, however, price differentials among the jurisdictions arise from differing statutory pricing schemes are attributable to the fact that collocation provided pursuant to Section 251(c)(6) must be priced in accordance with the Commission's TELRIC pricing standards (as set forth in 47 C.F.R. §§ 51.503 and 51.505), whereas collocation provided pursuant to Section 201 must be priced in accordance with the "just and reasonable" standard of Section 201(b) of the Act.

As Verizon readily acknowledges in its Application, it recovers costs differently in state and federal jurisdictions.[16] Under its federal tariff, Verizon recovers space preparation through substantially higher non-recurring charges, whereas, in New York, for example, space preparation charges are recovered through recurring charges. As a result of the vast difference in pricing between its federal and state charges for space preparation, Verizon's Application

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16 *See* Application at 6-7.

proposes a "conversion credit" for carriers purchasing federal physical collocation in the New England states, which will provide those carriers with a billing credit based upon the difference in cost between the much higher federal and state nonrecurring charges for pace preparation.[17] Despite differences in results, Verizon, the relevant state commissions and the Commission each adhered to the applicable respective standards in approving Verizon's state and federal physical collocation tariffs, and nonetheless, settled upon recurring and non-recurring charges that vary from state-to-state and between state and federal jurisdictions. The rates in its federal tariff were expressly found to be just and reasonable by the Commission after an extensive hearing. Verizon cannot now claim that these rates are unremunerative or otherwise unreasonable. Indeed, granting Verizon's Application would cause one competitor to face 171% increase in its annual collocation charges.

This Application represents nothing more than Verizon's second attempt to get the Commission to endorse Verizon's campaign to vastly increase physical collocation rates. Just last year Verizon's attempt was, in effect, rejected by the Commission following the Commission's investigation into Verizon's proposed tariff revisions, which sought to greatly increase the monthly rate for DC power for physical collocation, and to establish new rate elements for DC power for virtual collocation in Verizon South, and increase monthly rates for DC power for physical and virtual expanded interconnection arrangements in Verizon New York/Connecticut and Verizon New England.[18] Following initiation of the Commission's investigation and opposing comments, filed by a number of parties, Verizon withdrew its

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17 *Id.*

18 *See In the Matter of Bell Atlantic Tel. Companies Revisions in Tariff FCC Nos. 1 and 11, Transmittal Nos. 1373 and 1374; Verizon Tel. Companies Tariff FCC Nos. 1 and 11, Transmittal Nos. 23 and 24,* CC Docket No. 01-140, Order Terminating Investigation (Sept. 26, 2001).

proposed tariff changes effectuating the increases. The Commission should similarly reject Verizon's renewed attempts to raise these collocation rates under the cover of the instant Application.

Verizon has failed to provide any justification for requiring competitive carriers to obtain separate physical collocation arrangements, on a state-by-state basis, and to negotiate individual interconnection agreements, thereby vastly increasing the costs and decreasing the efficiency of collocation. Nor has Verizon justified subjecting competitive carriers to a regime where they would needlessly incur additional costs associated with the regulatory burden of maintaining multiple physical collocation arrangements, subject to varying rates, terms and conditions. For these reasons, its Application must be rejected. To the extent that the Commission is inclined to grant Verizon's deficient Application, the Commission must require Verizon to comply with Section 68.58(a)(4) of its rules,[19] which requires dominant carriers proposing an increased rate or charge, or effectuating an authorized discontinuance, to inform the affected customers.

B. Granting Verizon's Application Would Eliminate The Availability Of Physical Collocation To Verizon's Non-Carrier Customers

Besides needlessly increasing the cost of collocation for telecommunications carriers, granting Verizon's Application for the discontinuance of its federal physical collocation service also will eliminate the availability of new physical collocation service to non-carriers, such as internet service providers ("ISPs"), end users, and other non-carrier customers that currently obtain physical collocation *exclusively* pursuant to the terms and conditions of

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19 *See* 47 C.F.R. § 61.58(a)(4).

Verizon's federal tariffs. This would yield a result that was expressly rejected by the Commission in the *Local Competition Order*.[20]

Furthermore, Verizon's proposal to "grandfather" such arrangements is absolutely meaningless, because all Verizon services necessary to support physical collocation service will be available only through state tariffs and interconnection agreements.[21] This means that these support services will only be available to "telecommunications carriers." Accordingly, non-carriers will be forced to convert their existing federal physical collocation arrangements to virtual collocation arrangements, and to rely solely upon virtual collocation arrangements for their operations. Forcing non-carrier customers into this predicament has been expressly rejected by the Commission in the *Local Competition Order*.

In the *Local Competition Order* the Commission examined the relationship between its *Expanded Interconnection* rules[22] and collocation provided pursuant to Sections 251 and 252. The Commission concluded that:

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20 *See In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98); *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers* (CC Docket No. 95-185), First Report and Order, FCC 96-325, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*").

21 *See* Application at 5 ("All supporting services for these 'grandfathered' physical collocations arrangement will be provided through the applicable state physical collocation tariffs and interconnection agreements. This will include DC power; new cross connects; augments; new cable racking; new entrance cabling; changes, additions, or rearrangements of space; and all other miscellaneous services such as testing, escorts to non-collocation space, and identification badges, for which the customer is charged. Cross connects that are in-service and being billed under the federal tariffs at the effective date of the discontinuance tariff for the grandfathered collocation arrangements will also be grandfathered, *i.e.* they will continue to be provided under existing federal tariffs.")

22 *See In the Matter of Expanded Interconnection with Local Telephone Companies* (CC Docket No. 91-141); *Amendment of the Part 69 Allocation of General Support Facility Costs* (CC Docket No. 92-222), Report and Order and Notice of Proposed Rulemaking, FCC 92-440, 7 FCC Rcd 7369, 7389-90, ¶¶ 39-42 (rel. Oct. 19, 1992) ("*First Expanded Interconnection Order*"); *In the Matter of Expanded Interconnection with Local Telephone Company Facilities* (CC Docket No. 91-141, Transport Phase I); *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* Second Report and Order and Third Notice of Proposed Rulemaking, FCC 93-379, 8 FCC Rcd 7374, 7391, ¶ 29 and 7393, ¶ 31 (rel. Sep. 3, 1993) ("*Second Expanded Interconnection Order*").

> it would make little sense to find that Sections 251 and 252 supersede our *Expanded Interconnection* rules, because the two sets of requirement are not coextensive. For example, our *Expanded Interconnection* rules encompass collocation for interstate purposes for all parties, including non-carrier end users, that seeks to terminate transmission facilities at LEC central offices. In comparison, Section 251 requires collocation only for 'any requesting telecommunications carrier.' Certain competing carriers—and non carrier customers not **covered by Section 251—may prefer to take interstate expanded interconnection service under general interstate tariff schedules. We find that it would be unnecessarily disruptive to eliminate this possibility at this time. We also conclude that permitting requesting carriers to seek interconnection pursuant to our *Expanded Interconnection* rules as well as Section 251 is consistent with the goals of the 1996 Act to permit competitive entry through a variety of entry strategies.**[23]

Verizon's Application fails to provide any reason whatsoever for the Commission to reverse the conclusions that it reached in the *Local Competition Order.* Indeed, the case for avoiding undue disruptions in the telecommunications marketplace for carriers and non-carriers alike is even more compelling now than it was in 1996, when the *Local Competition Order* was released.

C. Verizon's Proposal To "Grandfather" Existing Federal Physical Collocation Arrangements Is Meaningless Because Verizon's Application Would Force Collocators To Purchase All Supporting Physical Collocation Services Pursuant To State Tariffs And Interconnection Agreements

Verizon's proposal to "grandfather" existing physical collocation arrangements provided pursuant to its federal tariffs is an empty and meaningless proposal. Under the terms of Verizon's Application, the physical arrangements now in place pursuant to federal tariff will be "grandfathered" in name only because each and every one of the supporting services necessary to maintain existing federal physical collocation arrangements will be available only pursuant to

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23 *Local Competition Order* at 15808, ¶ 611. (emphasis added)

state tariffs and interconnection agreements.[24] Indeed, Verizon's Application indicates only that space-related charges and cross-connects will be "grandfathered" following the discontinuance.[25] And "any federal cross-connects that are connected to state collocation arrangements will be converted to cross-connects under the applicable sate collocation tariffs or interconnection agreements."[26]

Accordingly, Verizon's "grandfathering" proposal will do absolutely nothing to either to avoid the "disruption" to these federal physical arrangements, rejected in the *Local Competition Order*, or to alleviate the future financial and economic burden on competitive carriers that will result from the discontinuance of federally-tariffed physical collocation service. Therefore, the Commission must find that Verizon's non-remedy will adversely affect the public convenience and necessity. It is, therefore, inevitable that competitive carriers and non-carriers alike, that elect to maintain their existing federal physical collocation arrangements will bear the economic and financial burden associated with obtaining state-by-state physical collocation arrangements pursuant to interconnection agreements and state tariffs.

D. The Availability Of Virtual Collocation Arrangements Does Not Provide An Adequate Alternative To Physical Collocation Arrangements And Therefore Their Availability Will Not Mitigate The Harm Of Granting Verizon's Application

Section 214 requires the Commission, in evaluating Verizon's Application, to consider the public need for physical collocation service in general, as well as the need for the particular physical collocation facilities at issue, and the existence, availability and adequacy of alternative collocation services. Verizon suggests in its Application that in conjunction with

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24 Application at 5.

25 Application at 4-5.

26 *Id.*

state physical collocation arrangements and interconnection agreement amendments, the availability of virtual collocation arrangements will mitigate the harm that would accompany the grant of Verizon's Application. Specifically, Verizon argues that the Commission's rules require only that ILECs tariff their virtual collocation service offerings and, accordingly, that the continued availability of federally-tariffed virtual collocation service will meet the needs of the community to which federally-tariffed physical collocation service currently is offered.[27] The Commission should reject Verizon's argument.

As demonstrated herein, requiring carriers to obtain physical collocation through state tariffs and interconnection agreements is dilatory, expensive, and uncertain. Contracts must be negotiated, amendments expire, and collocation provided pursuant to Sections 251 and 252, by definition, is subject to state specific requirements. Furthermore, a finding by the Commission in the instant proceeding that virtual collocation is an adequate substitute for physical collocation would have the effect of reversing a long line of Commission decisions that reach precisely the opposite conclusion. In fact, the Commission consistently has concluded that virtual collocation is not a substitute for physical collocation. The Commission has found that physical collocation arrangements provide superior competitive benefits and, therefore, must be made available to competitive carriers to the extent that such arrangements are technically feasible at a particular central office location.[28] Requiring competitive carriers to rely upon

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27 Application at 4.

28 *See In the Matter of Expanded Interconnection with Local Telephone Companies* (CC Docket No. 91-141); *Amendment of the Part 69 Allocation of General Support Facility Costs* (CC Docket No. 92-222), Report and Order and Notice of Proposed Rulemaking, FCC 92-440, 7 FCC Rcd 7369, 7389-90, ¶¶ 39-42 (rel. Oct. 19, 1992) ("*First Expanded Interconnection Order*"); *In the Matter of Expanded Interconnection with Local Telephone Company Facilities* (CC Docket No. 91-141, Transport Phase I); *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* Second Report and Order and Third Notice of Proposed Rulemaking, FCC 93-379, 8 FCC Rcd 7374, 7391, ¶ 29 and 7393, ¶ 31 (rel. Sep. 3, 1993) ("*Second Expanded Interconnection Order*").

virtual collocation would put them at a distinct disadvantage by forcing them to rely upon Verizon for equipment installation, maintenance and repair, an intolerable and competitively disadvantageous situation, as the Commission has found. Accordingly, Verizon's claim that the continued availability of federally-tariffed virtual collocation service will provide a technically-adequate alternative to expanded interconnection service through physical collocation is entirely without merit.

E. The Continued Provision Of Federal Expanded Interconnection Service Through Physical Collocation Will Not Impose Any Financial Or Economic Burden On Verizon

In undertaking its analysis of the Application, the Commission must consider the financial impact upon Verizon of being required to continue to provide federally-tariffed physical collocation service. Clearly, Verizon has failed to demonstrate any adverse impact that would arise from being required to continue to provide federally-tariffed collocation service. Indeed, Verizon is incapable of making such a showing – the rates for expanded interconnection were found to be just and reasonable by the Commission after an extensive notice and comment proceeding In fact, Verizon's Application to discontinue physical collocation through its federal tariff is based exclusively on a claim of administrative inconvenience and compliance with differing state and federal regulatory requirements.[29] This obviously fails to satisfy the Commission's standards under Section 214.

Verizon proclaims that "[d]ifferences in regulatory activity in the state and federal jurisdictions have created inconsistencies in rate levels and rate structures between state and federal tariffs for physical collocation that have been difficult for Verizon to reconcile" and that have resulted in "tariff-shopping" by competitive carriers seeking the lowest possible rates.

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29 Application at 3.

However, Verizon's Application fails to demonstrate any economic and financial burden that would be imposed by continued provision of federally-tariffed physical collocation service, as is required by Section 214. By its Application, Verizon merely seeks to shift the burden of reconciling state-by-state regulatory inconsistencies to competitive carriers which, as a result of the proposed discontinuance of service, will be able to obtain physical collocation service only by incurring increased transactional cost and delay. Accordingly, the Commission should reject it.

III. GRANTING VERIZON'S APPLICATION WOULD REQUIRE THE COMMISSION TO UNILATERALLY REVERSE A DECADE OF COLLOCATION JURISPRUDENCE

Black letter administrative law requires that before rescinding, or even modifying, existing rules or policies, the Commission must engage in rational reasoning and must make affirmative findings that prior rules or policies should be deliberately changed. Under the long-standing doctrine articulated in *State Farm*,[30] a decision by an administrative agency to modify or rescind an existing rule or policy must be "rational, based on the consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute."[31]

Specifically, a reviewing court will require that the agency's decision be accompanied by a "reasoned analysis indicating that prior policies and standards are being deliberately changed, and not casually ignored."[32] Indeed, the federal courts have declined to uphold actions by the Commission which tend to *unreasonably* reverse its existing rules and

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30 *Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29 (1983) ("*State Farm*").

31 *State Farm*, 463 U.S. at 42-43.

32 *Id.*, 463 U.S. at 43-44; *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1425 (D.C. Cir. 1983) (citing *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971)). To effect a change of law or policy, a federal administrative agency must articulate the factual basis for its decision, and must address significant comments made in the rulemaking proceeding and reasonably obvious alternative rules. *State Farm*, 463 U.S. at 43.

policies "without adequate explanation."[33] Accordingly, the Commission cannot reverse or diminish its current requirements for the provision of federally-tariffed physical collocation service by incumbent LECs absent a clearly articulated rationale that is supported by substantial record evidence.

Verizon's poorly reasoned and profoundly deficient Application does not support a conclusion that the Commission's current requirements that federally-tariffed collocation service by Verizon no longer serves the public interest, and therefore does not provide the Commission an adequate opportunity to reverse its regulatory policies that have prevailed for a decade. Accordingly, the Commission should review Verizon's Application in light of its rules and policies governing physical collocation, as promulgated in its *Expanded Interconnection* proceeding and reinforced by its *Local Competition Order*, and continuing with its series of Orders in the *Advanced Services* proceeding.

A. The Telecommunications Act Of 1996 Does Not Alter Or Displace Any Of The Collocation Rules Established In The *Expanded Interconnection* Proceeding

In its *Local Competition Order*, the Commission expressly concluded that the mandatory tariffing requirements for physical collocation service remain applicable to Section 201 services following the Telecommunications Act of 1996. The Commission noted that "Section 251(i) of the 1996 Act expressly provides that 'nothing in the Section shall be construed to limit or otherwise affect the Commission's authority under Section 201,'" which provided the statutory basis for the *Expanded Interconnection* rules. Accordingly, the Commission concluded

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33 *See e.g., People of the State of California v. FCC*, 39 F.3d 919 (9th Cir. 1994).

that the 1996 Act "as a matter of law, does not displace [its] existing rules and tariffing requirements to the extent they are consistent with the Communications Act."[34]

The Commission reasoned that the application of its mandatory tariffing requirements for physical collocation service would continue to play an important role under the Telecommunications Act of 1996, notwithstanding the mandatory physical collocation requirements for interconnection pursuant to Section 251. Indeed, in its *Local Competition Order*, the Commission concluded that certain competing carriers, and non-carrier customers not covered by Section 251, may prefer to obtain interstate expanded interconnection service pursuant to general interstate tariff schedules.[35]

Thus, a carrier requesting such service would have a choice between negotiating an interconnection agreement pursuant to Sections 251 and 252, or of purchasing tariffed interstate service pursuant to the Commission's *Expanded Interconnection* rules.[36] The Commission further concluded that such options permit competitive entry through a variety of entry strategies, as is consistent with the goals of the 1996 Act.[37] Conversely, the discontinuance of federally-tariffed physical collocation service by Verizon would restrict the entry strategies available to competitive carriers, and thereby would raise the barriers to entry into the market for competitive telecommunications service. Therefore, grant of Verizon's Application would be inconsistent with the Commission's express findings in implementing the 1996 Act.

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34 *Local Competition Order* at 15808, ¶ 610.

35 *Local Competition Order* at 15808-09, ¶ 611.

36 *Id.*

37 *Id.*

B. For A Decade The Commission Has Consistently Maintained That The Public Interest Requires ILECs To Tariff Collocation Pursuant To Section 201 Of The Act

In its *Expanded Interconnection* proceeding, the Commission concluded that collocation of circuit terminating equipment within the ILECs' central office serves the public interest.[38] Specifically, the Commission found that dedicated network equipment in the central office allows interconnecting carriers to provide their own transmission facilities to gain access to traffic aggregated at the central office and, thereby, fosters competition in the provision of such transmission facilities.[39] In its *Expanded Interconnection* proceeding, the Commission also concluded that central office space for physical collocation can be effectively provided only by ILECs.[40] In light of the ILECs' substantial market power over expanded interconnection offerings, and their incentive to set the terms and conditions of such offerings in a manner that is disadvantageous to interconnection carriers, the Commission concluded that tariffing requirements must be established, pursuant to Section 201, to prevent anticompetitive pricing and discrimination.[41]

The Commission's *Expanded Interconnection* rules require that ILECs tariff general terms and conditions applicable to their physical collocation offerings, including the cross-connect element; office space usage charges; labor and materials charges for initial preparation of central office space; and other charges that can be reasonably standardized for each central office, such as those for power, environmental conditioning, and use of the riser and

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38 *In the Matter of Expanded Interconnection with Local Telephone Company Facilities* (CC Docket No. 91-141), Memorandum Opinion and Order, FCC 94-190, 9 FCC Rcd at 5154, 5159, ¶¶ 10-11 (rel. Jul. 25, 1994) ("*Expanded Interconnection Remand Order*").

39 *Id.*

40 *First Expanded Interconnection Order* at 7445-46, ¶ 163.

41 *First Expanded Interconnection I* at 7442, ¶ 157; *see also Expanded Interconnection II* at 7391, ¶ 29 and No. 74; *Second Expanded Interconnection* at 7421, ¶ 86.

conduit space.[42] These federal tariffing requirements for collocation service remain in effect to the present day.

IV. DENYING VERIZON'S APPLICATION WOULD BE CONSISTENT WITH EVOLVING COMMISSION POLICY AS SET FORTH IN BOTH THE *TITLE II BROADBAND PROCEEDING*, AS WELL AS THE *COLLOCATION ORDER ON RECONSIDERATION*

In its recently released *Collocation Order on Reconsideration*, the Commission expressly required ILECs to establish cross-connect services that will allow collocated carriers to pass traffic to each other within an ILEC central office.[43] The Commission properly used its prescriptive authority under Section 201 of the Act to require the service be provided, and ordered that the new service be filed in the ILEC's federal tariffs. The Commission reasoned that requiring cross-connect offerings to be made available pursuant to Section 201, and included in federal tariffs, "is a necessary result of Section 203(a)'s mandate that all services subject to the Commission's jurisdiction under Section 201 be federally-tariffed."[44]

The Joint Commenters submit that denying Verizon's Application would be wholly consistent with the Commission's existing collocation rules, which now require ILECs to provide federally-tariffed cross-connect services, the pricing of which will be under the Commission's jurisdiction. Similarly, the Commission should, in keeping with the reasoning in the *Collocation Order on Reconsideration* and the legal underpinnings thereof, continue to require Verizon to provide its federal physical collocation service pursuant to Section 203(a). This is particularly true, in light of the fact that the Commission's federal tariffing requirements

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42 *First Expanded Interconnection* at 7442, ¶ 157-58; *see also Second Expanded Interconnection* at 7421, ¶ 86; *Expanded Interconnection Remand Order* at 5176, ¶ 73.

43 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* CC Docket No. 98-147), Order on Reconsideration of Fourth Report and Order and Fifth Report and Order, FCC 02-237 at ¶ 8 ("*Collocation Order on Reconsideration*").

44 *Id.* at ¶ 9.

for cross-connect offerings logically assume that other elements of physical collocation service will be federally-tariffed. Indeed, most, if not all, of the services being terminated through these facilities are interstate access services.

Allowing Verizon to transfer existing federal physical collocation arrangements to state tariffs and interconnection agreements provided under Section 251(c)(6), is clearly improper, in that it would, in effect, permit Verizon to withdraw its obligation to provide cross-connects mandated by the Commission under Section 201. Previously, Verizon has taken the position that Section 251(c)(6) does not obligate Verizon to cross-connect the physical collocation equipment of competitors with that of other competitive carriers. To date, the Commission has properly rejected that argument.

However, in its Application, Verizon suddenly has changed its position, and now states that "new cross-connects" are available under existing "state tariffs."[45] Paradoxically, however, Verizon (and the other RBOCs) argue in the Commission's on-going Triennial Review proceeding[46] that they should no longer be required to provide unbundled transport as a UNE because competitors can obtain competitive wholesale transport services by gaining access to an alternate carrier's transport by cross-connecting its cages at a common point.[47] Indeed, Broadview has, in fact, purchased alternate carriers' transport to Broadview's collocation cages.

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45 Application at 5.

46 *In the Matter of Review of Section 251 Unbundling Obligations of Local Exchange Carriers*, CC Docket No. 01-339, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, (CC Docket No. 96-98); *Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Notice of Proposed Rulemaking, 15 FCC Rcd 22781 (rel. Dec. 20, 2001) ("*Triennial Review NPRM*" or "*UNE Triennial Review*").

47 Comments of Verizon Telephone Companies *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Wireless Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), at 106-114 (April 5, 2002).

In order to use an alternate carrier's transport, however, Broadview must have access to cage-to-cage cross-connects. Assuming, *arguendo*, that the Commission accepts Verizon's argument (which it obviously should not), and allows Verizon to withdraw its federally-tariffed cross-connect service (in direct contravention of the *Collocation Order on Remand*), the Commission would effectively preclude the ability of competitors to cross-connect with other competitors for purposes of obtaining transport or exchanging traffic. The Commission obviously should not go down this road. Accordingly, the Commission should reject Verizon's attempt to withdraw a federally-tariffed service that the Commission has concluded must be provided pursuant to Section 201 of the Act.[48]

Denial of Verizon's Application also would be consistent with the Commission's tentative conclusions in the on-going *ILEC Broadband Proceeding*. There, the Commission is considering reclassifying broadband services as non-Title II "information service." Such a finding would exempt broadband service from Title II regulation, and would effectively preclude carriers from obtaining the concomitant Section 251 interconnection with the ILECs' broadband offerings.[49] We note that the Joint Commenters do not support the Commission's tentative conclusion and absolutely oppose such a reclassification.

Assuming, however, that the Commission ultimately does adopt its tentative conclusion and finds that broadband service is not "communications" service, subject to the Commission's Title II jurisdiction, providers of broadband service may not be able to obtain collocation under Section 251 and 252 of the 1996 Act, and telecommunications carriers that are

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48 *See Verizon Tel. Co. v. FCC*, 292 F.3d 903, 912 (D.C. Cir. 2002).

49 *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services* (CC Docket No. 01-337), Notice of Proposed Rulemaking, FCC 01-360 at ¶ 44 (rel. Dec. 20, 2001) ("*ILEC Broadband Proceeding*").

collocated may not be able to obtain cross-connects to broadband services under state tariffs and interconnection agreements. If this outcome does result from the Commission's *ILEC Broadband Proceeding* (and the Joint Commenters oppose such an outcome) then, broadband collocation and cross-connect services would only be available through federal collocation tariffs. Accordingly, the discontinuance of expanded interconnection service through federal physical collocation would significantly erode competition in the market for broadband service. Denial of Verizon's Application will ensure that broadband carriers have some method of physical collocation and interconnection beyond Sections 251 and 252.

V. CONCLUSION

For the foregoing reasons, the Application of Verizon Telephone Companies to discontinue expanded interconnection service through physical collocation must be rejected by the Commission.

Respectfully submitted,

Jonathan Canis
Ross A. Buntrock
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
202-955-9600
rbuntrock@kelleydrye.com

September 18, 2002

CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that I caused a copy of the foregoing *Initial Comments of the Association for Local Telecommunications Services, The Competitive Telecommunications Association, and Broadview Networks, Inc.* to be forwarded, via electronic mail, this 18th day of September 2002, to the following individuals:

Ms. Jennifer McKee
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
jmckee@fcc.gov

Mr. Joseph DiBella
Verizon Communications, Inc.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
Joseph.dibella@verizon.com

Scott Bergmann, Legal Counsel to the Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
sbergman@fcc.gov

Jessica Rosenworcel, Legal Counsel to the Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
jrosenwo@fcc.gov

Page Adams

Courtenay P. Adams